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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,058	08/18/2003	Kathryn G. Schroeder	22330/301	4163

34205 7590 02/12/2007  
OPPENHEIMER WOLFF & DONNELLY LLP  
45 SOUTH SEVENTH STREET, SUITE 3300  
MINNEAPOLIS, MN 55402

EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/12/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/643,058	<b>Applicant(s)</b> SCHROEDER, KATHRYN G.	
	<b>Examiner</b> Michael Brown	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006 and 16 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers '965 in view of Greenberg '413, along with Thompson.

Summers discloses in figures 1-15 (note fig. 7) a device for massaging the anatomy of a body part, the device comprising a garment 20, configured for wear by a user, the garment having a front portion (not shown), and a back portion (fig. 7), the back portion is configured to be aligned with a user's back when the garment is worn (fig. 7), a plurality of various therapeutic massage tools 22 (the pads come in various shapes and heights) and a plurality of channels 46 (the pockets 46 provide channels), located in the back portion (fig. 7), extending substantially across the back of the user when worn (the spacing between the channel allows them to extend substantially across the back of the user). However, Summers doesn't disclose the channels extending from the top to the bottom of the garment or interior pockets located in the front interior of the garment. Greenberg teaches in figure 1 an exercising garment comprising pockets (28, 30), located in the front interior of the garment. Thompson teaches in figures 1-4 a garment having horizontal channels 30, extending from the top to the bottom of the garment. The channels would allow the massage tool to be

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inserted completely through the channel. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the interior pockets located in the front interior of the garment as taught by Greenberg could be incorporated into the garment disclosed by Summers in order to be able to insert massagers in the interior pockets. Summers teaches in figure 1 massage tools 22 extending from the top to the bottom of the garment. The massage tools could be located in the channels 46. It could be argued that the channels disclosed by Summers don't extend from the top to the bottom of the garment. Thompson provides a teaching to have channels extending from the top to the bottom of the garment. Thus, providing a teaching to have the channels disclosed by Summers extend from the top to the bottom of the garment. As for claims 2-3, the massage tools may be stored in the interior pockets or may be various shapes, sizes and consistencies. As for claim 4, the massage tools may be hollow balls with varying sizes and consistencies.

Claims 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Summers '965 in view of Greenberg, along with Thompson.

Summers discloses a massage therapy garment for use by a user to provide massage treatment to localize soreness and stiffness at an identified area of the user's body, the garment comprising a garment body 20, configured to be worn by the user and configured to cover portions of the user's body including identified areas, a plurality of therapeutic massage tools 22, a plurality of adjacent, vertical chambers 46 formed by layers of the garment (pockets 46 have to have at least two layers) body, a plurality of seams (any garment will includes seams), each chamber is configured to house at least

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one massage 22, the plurality of chambers covering a majority of the user's body (fig. 7), a user can have selective placement to allow for massaging the identified area where pressure is to be applied. However, Summers doesn't disclose a storage compartment attached to the garment, the garment being a vest, a jacket, the massage tool being a compressible ball, a racquet ball or a tennis ball, a first garment layer attached to a second garment layer and joined to one-another with a plurality of parallel seams or the massage tool being a solid ball. Greenberg teaches in figures 1-4 a garment that is a jacket 10 having a first and second garment layer (the first layer is the garment and the second layer is the pocket 32), connected by parallel seams (fig. 1, the parallel seams on the pocket) and a storage compartment 28 that a massage tool can be stored in. Thompson teaches in figures 1-3 a garment that is a vest 10 having a plurality of adjacent and substantially horizontal chambers 30. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the horizontal chambers as taught by Thompson could be substituted for the vertical chambers disclosed by Summers in order to allow the chambers to extend across the entire area of the user's back. The garment could be a vest as taught by Thompson. The storage compartment and the seams as taught by Greenberg could be used to store a massage tool until it is needed. The seams could be used to hold the compartments in place. It is a design choice to make the massage tool, a solid ball, a compressible ball, a racquet ball or a tennis ball. The plurality of housing means recited in claim 15 was interpreted as being a chamber. The chambers as taught by Thompson extend along the entire length of the user's back. Note, any area along the user's back

could be an identified area. The seams as taught by Greenberg could be used to attach the chambers as taught by Thompson to the vest.

***Response to Arguments***

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

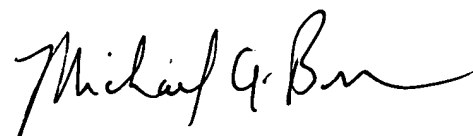
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
February 2, 2007

A handwritten signature in black ink, appearing to read "Michael A. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

MICHAEL A. BROWN  
PRIMARY EXAMINER